

South Dakota Danielson Specialist Rubrics Order Form

Complete the following form for each School District with school buildings using the Rubrics.

Districts pay an annual \$30 fee per building. Licenses valid 7/1/2015 – 6/30/2016.

ASCD Specialist Rubrics:

Framework for School Psychologist
Framework for Library Media Specialists
Framework for School Counselors
Framework for Therapeutic Specialists
Framework for School Nurse
Framework for Instructional Specialists

District Information Contact and Billing Information:

Contact Name: _____ Title: _____
District Name: _____ Email Address: _____
District Shipping Address: _____
District Billing Address: _____
Phone: _____ District Website: _____

Number of School Buildings using Rubrics: _____ x \$30 per year per building = TOTAL _____

Please select one of the following options:

- ☐ A purchase order is not required. Please invoice me.
☐ A purchase order is attached.
☐ A purchase order is in process and will be issued by (please insert date): _____.
☐ We wish to pay by credit card: Enter information below or Contact Wendy Walker at wendy.walker@teachscape.com or (415) 748-3608.

Amount (US \$)	
Credit Card #	
Expiration Date	
Name on Card	
Billing Address	
Customer email	
Customer phone#	

Please Note: 1) Prices do not include hardware or sales tax, if applicable. 2) Fees are based on services provided and not actual usage. 3) All users have access to unlimited technical support during help desk hours 4) This Order is governed by the attached Teachscape Standard Terms and Conditions. 5) For additional information, please contact your Teachscape account executive, Timothy Jarotkiewicz at timothy.jarotkiewicz@teachscape.com or 312.459.4679	Remit Payments To: Teachscape, Inc. P.O. Box 49242 San Jose, CA 95161-9242	Corporate address: Teachscape 655 Montgomery, 8 th Floor San Francisco, CA 94111 (NEW ADDRESS AS OF 2/23/15) Tax ID # 77-0639457
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Upon signature by Customer and submission to Teachscape, this Order Form shall become legally binding unless this Order Form is rejected by Teachscape for any of the following reasons: (1) the signatory below does not have the authority to bind Customer to this Order Form, (2) changes have been made to this Order Form (other than completion of the purchase order information and the signature block), or (3) the requested purchase order information or signature is incomplete or does not match our records or the rest of this Order Form. This Order Form is governed by the terms of the Teachscape Standard Terms and Conditions, attached to the Form.

Signature _____

Name: _____

Title: _____

Date: _____

Email/Fax the completed signed forms to: Wendy Walker at wendy.walker@teachscape.com or (415) 651-8846.

Teachscape Standard Terms and Conditions

1. GENERAL

These Terms and Conditions ("Agreement") shall apply to all supply of products and services provided by Teachscape, Inc. ("Teachscape"), and the company or organization ("Customer") listed on the Order to which this Agreement is appended. This Agreement is subject to the Order, which is incorporated herein by reference. In case of any inconsistency or conflict between the provisions of this Agreement and the Order, the documents shall prevail in the following order: (i) the Order, (ii) any Statement of Work incorporated in the Order, and (iii) this Agreement.

2. DEFINITIONS

"Agreement" means these Terms and Conditions, together with the Order.

"End-User" means educators and other relevant persons who are authorized by Customer (and in respect of whom any applicable fees have been paid) to access and use the Products and have entered into the EULA.

"EULA" means the End User License Agreement entered into between Teachscape and the end user of its Products.

"Order" means Teachscape's quote and/or any order form filled out and submitted by or on behalf of Customer, and accepted by Teachscape, for Customer's purchase of the Products under this Agreement, together with any related Statement of Work.

"Product(s)" means Teachscape's products and services as further described in the Order and/or Statement of Work, to be provided by Teachscape to Customer according to the terms and conditions of this Agreement.

"Services" means any services to be provided by Teachscape hereunder or in connection with the Products.

"Updates" means a release of bug-fixes, patches, revisions, additions, modifications, enhancements, improvements and new versions and releases made to correct defects in the Products.

3. GRANT OF LICENSE, USE RESTRICTIONS AND ADDITIONAL PRODUCTS

3.1 Teachscape grants to Customer and Customer hereby accepts a limited, non-exclusive, non-transferable license during the Term to allow End-Users to access and use the Products, as set forth in the EULA, solely for Customer's professional and personnel development uses. For the avoidance of doubt, the End-Users' access and use of the Products is subject to and shall be governed by the EULA.

3.2 Customer is responsible for all activities (its own and its End-Users') with respect to the use of the Products..

3.3 With respect to Products that permit the upload of video, Customer has the sole responsibility for notifying and obtaining relevant consents and waivers from all necessary persons, and taking all such other actions as may be necessary to ensure that Customer's (or its End-Users') use of the Products or material and content produced through the use of such Products complies with federal, state, and local laws and regulations as well as school or district policies.

3.4 Customer shall not, and shall not permit any End-User or third party to: (i) modify, copy, revise, adapt, alter, translate, or create derivative works from the Products; (ii) merge or combine the Products or any part thereof with other software or other content, whether online or otherwise; (iii) sub-license, distribute, sell, encumber, provide for service bureau use, lease, rent, loan, or provide its password to or otherwise transfer the Products (or access to the Products) to any third party; (iv) reverse engineer, decompile, disassemble, or otherwise attempt to derive any source code from the Products; (v) remove or alter any notices in the Products; or (vi) use the Products beyond the scope of the license granted herein or otherwise in violation of any applicable laws, rules or regulations. Without limiting the foregoing, the restrictions on use of the Products shall also apply to any Products supplied to Teachscape by its suppliers or licensors and licensed to Customer hereunder

4. FEES AND PAYMENT

4.1 Customer agrees to pay the license fees and the support fees (if any), as applicable, plus any and all applicable taxes, as set forth in the Order. Unless otherwise stated in the Order, all fees hereunder shall be paid within thirty (30) days of the date of invoice.

4.2 In the event payments due under this Agreement are not received by Teachscape by the due date, Customer shall pay to Teachscape interest on the overdue payment from the date such payment was due to the date of actual payment at a rate of one and one-half percent (1.5%) per month, or the highest rate allowed under applicable law.

5. LIMITED WARRANTY

5.1 For a period of 90 days after the date the Customer has been provided with login and password granting access to the Products, Teachscape will take commercially reasonable steps to modify or replace any Product which in Teachscape's judgment fails to conform substantially to the functional specifications set forth in the applicable product user documentation. Alternatively, Teachscape may at its option refund, a ratable share of the license fee paid with the amount to be refunded being proportionate to the remaining license period. All Services shall be performed in a reasonably competent and workmanlike manner.

5.2 EXCEPT AS EXPRESSLY PROVIDED HEREIN, THE PRODUCTS AND SERVICES ARE PROVIDED ON AN "AS IS" BASIS. TEACHSCAPE MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE, WITH REGARD TO ANY PRODUCTS PROVIDED UNDER THIS AGREEMENT. TEACHSCAPE DISCLAIMS ALL WARRANTIES ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING AND USAGE OF TRADE OR THEIR EQUIVALENTS UNDER THE LAWS OF ANY JURISDICTION. TEACHSCAPE DOES NOT WARRANT THAT THE PRODUCTS WILL MEET THE CUSTOMER'S REQUIREMENTS OR THAT OPERATION OF THE PRODUCTS WILL BE UNINTERRUPTED OR ERROR-FREE. TEACHSCAPE SPECIFICALLY DOES NOT WARRANT THAT THE PRODUCTS CONFORM TO ANY RELATED STATUTE OR REGULATION.

6. OWNERSHIP

6.1 **Teachscape content and data.** Any and all intellectual property rights worldwide, in and to the Products, including without limitation patents, copyright, trade secrets, know-how, confidential information, trademarks and logos pertaining thereto, are owned exclusively by Teachscape and, as the case may be, its suppliers and licensors. Except only as expressly stated herein, Customer is not granted any license or right with respect to the Products or any part thereof. Except as provided in Section 0 below, Teachscape shall own any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by Customer or End-Users (collectively "**Comments**"), relating to the Products and Customer hereby assigns the same to Teachscape. Customer is solely responsible for the accuracy, quality, integrity, legality, reliability and appropriateness of any Comments provided to Teachscape and any other data provided by Customer to Teachscape through the use of the Products. Customer agrees that no Comments or other data submitted to Teachscape will violate any rights of any third party, including copyright, trademark, privacy or other personal or proprietary rights.

6.2 **Customer content and data.** Teachscape shall not own any right, title, or interest in or to any content and data created by Customer and its End-Users or other employees through the use of the Products (even if such content and data is hosted, stored or transmitted on Teachscape's computers or systems). In the absence of Customer notifying Teachscape otherwise, Teachscape shall be permitted to assume that Customer owns all such content and data and to the extent permitted by state law, Customer shall hold Teachscape harmless from any actions consistent with that assumption. However, Customer hereby permits Teachscape to use the information regarding Customer's and its End-Users' use of the Products and the content and de-personalized data created by them for professional learning, educational or product development purposes. For the avoidance of doubt, this permission does not allow Teachscape to republish Customer and or End-User content.

7. UPDATES AND SUPPORT SERVICES

During the Term (as defined below), Teachscape may provide to Customer, at no additional charge (to the extent generally provided at no additional charge), Updates made to the Products that Teachscape makes generally available to its other licensees at the time such Updates are generally released. The terms of this Agreement will govern any Updates provided by Teachscape that replace and/or supplement the original Products, unless such Update is accompanied by a separate license in which case the terms of that license will govern. Any support Services provided under the Agreement shall be specified in the Order and/or Statement of Work.

8. INDEMNIFICATION

8.1 Subject to the limitations set forth in Section 10.1 below, Teachscape shall indemnify, defend and hold harmless Customer from and against any claim or suit that any of the Products, when used within the scope of this Agreement and as intended by Teachscape, infringes on any patents, copyrights or trademarks under the laws of the United States of a third party; provided, however, that Teachscape is immediately notified in writing of such claim and is given the right to control the defense of all such claims, lawsuits and other proceedings. In no event shall Customer settle any such claim, lawsuit or proceeding without Teachscape's prior written approval. Should any

Product become, or in Teachscape's opinion be likely to become, the subject of such a claim, lawsuit or other proceeding, Teachscape shall, at its option and expense, (a) procure for Customer the right to continue using the relevant Product in accordance with this Agreement; (b) replace or modify the relevant Product so that it becomes non-infringing but with substantially equivalent functionality and performance; or (c) if neither (a) nor (b) is reasonably available, terminate the Agreement insofar it relates to the infringing Product and refund any license fees paid by the Customer hereunder with respect to the relevant Product. Teachscape shall have no liability for any alleged or actual infringement based on (1) use of the Products in breach of the terms of this Agreement or otherwise for a purpose or in a manner for which the Products were not designed or intended; (2) use of any older version of the Products when use of a newer or updated version made available by Teachscape to Customer would have avoided the infringement; (3) any modification to the Products made without Teachscape's written approval; (4) any modifications to the Products made by Teachscape pursuant to Customer's specific instructions; (5) any and all modifications or adaptations made by Customer or any third party on behalf of the Customer, whether or not in compliance with this Agreement; and/or (6) the use of the Products in combination with any other products, servers or software if the infringement would not have occurred but for such combination. THIS SECTION 8.1 STATES THE ENTIRE LIABILITY OF TEACHSCAPE, AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY, WITH RESPECT TO INTELLECTUAL PROPERTY INFRINGEMENT CLAIMS.

8.2 Customer agrees to indemnify and hold harmless Teachscape and its officers, employees, representatives, affiliates and successors from and against any loss, liability, expense or damage (including reasonable attorney's fees) incurred by any of them as a result of Customer's or its End-Users' failure to comply with its obligations (i) in this Agreement, or (ii) under (1) the Family Educational Rights and Privacy Act; (2) the Children's Online Privacy Protection Act; (3) any other federal, state, or local or foreign laws that address privacy, data protection, wire-tapping, videotaping, or other related subjects; or (iii) under any employee contracts, union agreements, or contracts with other third parties. Furthermore, Customer agrees to indemnify and hold harmless Teachscape and its officers, employees, representatives, affiliates and successors from and against any claim or suit that the Products infringe on any patents, copyrights or trademarks under the laws of the United States of a third party caused by any of the events listed in Section 8.1 (1) – (6) above.

9. CONFIDENTIALITY

Neither party shall disclose or use any confidential and proprietary information of the other party for any purpose outside the scope of this Agreement, and each such party shall protect the confidentiality of the confidential information of the other in the same manner that it protects the confidentiality of its own confidential information (and in any case with reasonable care). "Confidential information" for purposes hereof shall not include any information that: (i) is or becomes generally known to the public without breach of any obligation owed to the disclosing party; (ii) was previously known to the recipient or is independently developed or received from a third party, in any case without breach of any obligation owed to the disclosing party; or (iii) is required to be disclosed under applicable law, subpoena or other legal process.

10. LIMITATION OF LIABILITY

10.1 TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES OF ANY KIND, INCLUDING LOST PROFITS, LOSS OF BUSINESS, OR OTHER ECONOMIC DAMAGE, AS A RESULT OF BREACH OF ANY TERM OF THIS AGREEMENT, REGARDLESS OF WHETHER THE PARTY ALLEGEDLY LIABLE WAS ADVISED, HAD OTHER REASON TO KNOW, OR IN FACT KNEW OF THE POSSIBILITY THEREOF. FURTHERMORE, IN NO EVENT SHALL TEACHSCAPE'S LIABILITY TO CUSTOMER ARISING UNDER THIS AGREEMENT EXCEED THE AGGREGATE FEES PAID TO TEACHSCAPE HEREUNDER, INCLUDING BUT NOT LIMITED TO CLAIMS RELATED TO CONTRACT, NEGLIGENCE OR STRICT LIABILITY IN TORT OR WARRANTY.

10.2 CUSTOMER ACKNOWLEDGES THAT USE OF THE PRODUCTS AND THE CONTENT AND DATA RESULTING THEREFROM, IS AT CUSTOMER'S SOLE RISK, AND DEPENDS SOLELY ON CUSTOMER'S JUDGMENT, INTERPRETATION AND CONSIDERATION. CUSTOMER SHALL BE SOLELY RESPONSIBLE FOR ITS USE OF THE PRODUCTS PROVIDED HEREUNDER, AND THE CONTENT AND DATA RESULTING THEREFROM. FURTHER, CUSTOMER SHALL BE SOLELY RESPONSIBLE FOR ANY DECISIONS OR POLICIES BASED UPON OR DERIVED FROM THE USE OF SUCH PRODUCTS AND THE CONTENT AND DATA RESULTING THEREFROM.

11. FORCE MAJEURE

If either party's performance of any obligation under this Agreement, except for the payment of money owed when due, is prevented or delayed by an event beyond such party's reasonable control, that party will be excused from such performance to the extent it is necessarily prevented or delayed thereby.

12. TERM AND TERMINATION

12.1 This Agreement and the license granted hereunder shall remain in effect for the term set forth in the Order ("Term") unless earlier terminated in accordance with this Agreement. At the end of the Term, all rights to access or use the Products shall end.

12.2 Each party has the right to terminate this Agreement with immediate effect if the other party should violate any of the provisions or conditions of this Agreement, and should fail to discontinue and correct such violation (if it is capable of remedy) within thirty (30) days after receipt of notice in writing from the complaining party.

12.3 Each party has the right to terminate this Agreement at any time with immediate effect if the other party should become the subject of proceedings under any bankruptcy or insolvency law, enter into composition with its creditors, apply for financial re-organization, enter into liquidation, suspend payments to creditors or is, or can reasonably be deemed to be, insolvent.

13. MISCELLANEOUS

13.1 **Entirety of Agreement, Amendments and Waiver.** This Agreement represents the entire agreement of the parties, superseding all other agreements and discussions. This Agreement may not be amended except in writing signed by both parties. Any purchase order, pre-printed statement of terms, confirmation or other similar document exchanged or tendered in the course of the parties' dealings which purports to amend, waive or supplement the terms hereof is hereby rejected and is agreed to be insufficient for such purpose, unless the same is conspicuously titled "AMENDMENT OF TEACHSCAPE TERMS AND CONDITIONS" (or words plainly carrying such intention) and is signed by an officer of the party or parties against which such purported amendment is to be enforced. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving.

13.2 **Assignment.** Neither party may assign this Agreement or delegate its obligations hereunder without the prior written consent of the other party (which shall not be unreasonably withheld); provided that no such consent shall be required in the event of assignment by a party to a successor in interest to such party's business, whether by merger, sale of assets or otherwise.

13.3 **Notice.** All notices required under this Agreement must be in writing and are effective on the date received (unless the notice specifies a later date).

13.4 **Severability.** In case one or more of the provisions of this Agreement should be held invalid, illegal or unenforceable in any respect for any reason, the same will not affect any other provision in this Agreement, which will be construed to give maximum effect to the extent of the parties as evidenced by this original Agreement as originally drafted save to the extent of such invalid, illegal or unenforceable provision.

13.5 **No Third Party Beneficiaries.** Nothing contained in this Agreement shall be deemed to create any contractual relationship with, or to give a cause of action in favor of, any third party against either party.

13.6 **Headings.** The headings of this Agreement are inserted for convenience only and shall not affect the meaning or interpretation of this Agreement.

14. ARBITRATION

Any dispute or controversy arising out of or relating to this Agreement, including without limitation, any and all disputes, claims (whether in tort, contract, statutory or otherwise) or disagreements concerning the existence, performance, breach, interpretation or application of this Agreement shall be resolved by final and binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association (the "AAA") then in effect. The arbitration shall take place in San Francisco, California and be administered by the AAA. The arbitral tribunal shall be composed of one (1) arbitrator. If the parties fail to agree on the arbitrator within twenty (20) calendar days after the initiation of an arbitration, the AAA shall appoint the arbitrator. The decision of the arbitrator will be final and binding on the parties. Notwithstanding the foregoing, each party shall have the right to bring an action for injunctive or other relief in any court of competent jurisdiction in the event of a breach or threatened breach the other party's obligations under Section 3 and Section 9 above.